

§ 4.478

title, the authorized officer may provide in his decision that it shall be in full force and effect pending decision on an appeal therefrom. Any action taken by the authorized officer pursuant to a decision shall be subject to modification or revocation by the administrative law judge or the Board upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, a decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

[44 FR 41790, July 18, 1979, as amended at 60 FR 9958, Feb. 22, 1995]

§ 4.478 Conditions of decision action.

(a) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative, and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing preference will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of part 4100 of this title.

Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 48 FR 17596, Apr. 25, 1983, unless otherwise noted.

GENERAL PROVISIONS

§ 4.601 Purpose of these rules.

These rules are adopted by the Department of the Interior pursuant to

43 CFR Subtitle A (10-1-01 Edition)

section 504 of title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. 96-481. Under the Act, an eligible party may receive an award for attorney fees and other expenses when it prevails over the Department in an adversary adjudication under 5 U.S.C. 554 before the Office of Hearings and Appeals, unless the Department's position as a party to the proceeding was substantially justified or special circumstances make an award unjust. The purpose of these rules is to establish procedures for the submission and consideration of applications for awards against the Department.

§ 4.602 Definitions.

As used in this part:

(a) *The Act* means section 504 of title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. 96-481.

(b) *Adversary adjudication* means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license.

(c) *Adjudicative officer* means the official who presided at the adversary adjudication.

(d) *Department* refers to the Department of the Interior or the relevant department component which is a party to the adversary adjudication (*e.g.*, Office of Surface Mining Reclamation and Enforcement or Bureau of Land Management).

(e) *Proceeding* means an adversary adjudication as defined in § 4.602(b).

(f) *Party* includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes.

§ 4.603 Proceedings covered.

(a) These rules apply to adversary adjudications required by statute to be conducted by the Secretary under 5 U.S.C. 554. Specifically, these rules apply to adjudications conducted by the Office of Hearings and Appeals